

(c) Remarks

The claims are 1, 8-12, 14-17, 19, 22 and 23 with claims 1 and 16 being independent. Claims 2-7, 13, 18, 20 and 21 were cancelled as nonelected. Claims 1 and 16 were amended to delete the monomer units [1] - [3] and the corresponding units [9]-[11].

Reconsideration of the claims is requested.

It is noted that the Examiner agreed to rejoin any non-elected process claim when a corresponding product claim was elected and deemed allowable. For that purpose, nonelected process claims 14, 16, 17, 19, 22 and 23 were amended, as necessary, to be commensurate in scope with elected Group 1, claims 1 and 8-12.

Claims 1, 8, 9 and 12 were rejected as an obviousness-type double patenting over claims 1, 2, 12, 14 and 15 of U.S. Patent No. 7,153,622 and over claims 1, 2 and 3 of U.S. Patent No. 6,873,477. Claims 1 and 8-12 were rejected as anticipated by or as obvious over EP '475, EP '930 or EP '728. The grounds of rejection are respectfully traversed.

With regard to the obviousness-type double patenting rejections, it should be noted that the monomers of formulae [1] to [3] in amended claims 1 and 16 were cancelled without prejudice or disclaimer. In U.S. Patent 7,153,622 ('622 Patent) chemical formulae [3], [4], and [8] may be deemed pertinent to instant chemical formulae [5], [4] and [6] respectively. It should be understood that chemical formula [3] of the '622 Patent lacks the phenyl -CH₂-O-(CH₂)_e of instant formulae [5], instead, having a phenyl-O-(CH₂)_e. A benzyloxy group is present in instant formula [5], not a phenoxy group as in the '622 Patent claims.

In chemical formula [4] of the '622 Patent a phenyl -CH₂-(CH₂)_d- group is present compared to phenyl -(CH₂)_d- in instant formula [4]. In chemical formula [4] of the '622 Patent,

when “d” = 1-7, then R₄ is H, halogen, -CN-, -NO₂-, -CF₃-, -C₂F₅ or -C₃F₇. When “d” is 0 a benzyl group is present. To the contrary, in instant chemical formula [4], when “d” is 0, no benzyl [phenyl-CH₂-] group is present, only a phenyl group is present. When “d” is 1-8, R₄ is CH₃, C₂H₅ and C₃H₇, not H, halogen, -CN, -NO₂, -CF₃-C₂F₅ or -C₃H₇ as in the ‘622 Patent claims.

In chemical formula [8] of the ‘622 Patent i.e., a phenyl -S-(CH₂)_b- group is present. In instant formula [6], a benzyl-S-(CH₂)_r- is present i.e., (phenyl-CH₂-S-(CH₂)_p-), not the phenyl-(CH₂)_h- group of the ‘622 Patent claims.

In U.S. Patent 6,853,477 the same differences are present as above for formulae [3], [4] and [8], which are similar to instant formula [4]-[6]. Therefore, no conflict exists.

The cited prior art fails to teach or suggest instant formulas [4]-[8]. None of the groups in the cited references corresponding to instant group R₁ is cyclohexyl, benzyloxy, benzylsulfo or benzylsulfoxy. In the cited references the group corresponding to instant group R₁ is H, halogen, chromophore, carboxyl or epoxy. None of the instant R₁ groups; cyclohexyl, benzyloxy or benzylsulfo is deemed a mere predictable variation from any of H, halogen, carboxyl or epoxy. There are profound differences in structure, which provide unpredictable properties to a polymer, where the instant cycloalkyl, benzyloxy or benzylsulfo groups are pendent as compared to the corresponding prior art groups; H, halogen, chromophore, carboxyl or epoxy. There is no rationale in the art to explain why one would arbitrarily substitute cyclohexyl, benzyloxy or benzylsulfo for H, halogen, carboxy, chromophore or epoxy.

The claims should be allowed and the case passed to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

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